IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PETITION NO.2516 OF 2006

Mukand Limited ..Petitioner.
Vs.
Mukand Staff & Officers' Association ..Respondent.
...
Mr. P.K. Rele, Senior Advocate with Mr. Piyush Shah with Mr. K.P. Krishnan Nair with Mr. Rajesh Rele for the Petitioner.

Mr. Sanjay Singhavi with Ms. Jane Cox for the Respondent.
...

CORAM: DR. D.Y. CHANDRACHUD, J.
5th October, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request taken up for final disposal at this stage. Learned counsel for the Respondent waives service.

2. The Petition arises out of an order passed by the Industrial Tribunal in a reference under Section 10 of the Industrial Disputes Act, 1947 by which an application for amendment of the statement of claim has been allowed. The principal ground on which the order of the Industrial Tribunal has been challenged is that the amendment that is proposed seeks to reopen a question which was concluded by a judgment of the Supreme Court in

Mukand Limited v. Mukand Staff and Officers' Association[1] and that consequently the Tribunal was manifestly in error in allowing the amendment. In order to appreciate the challenge, a reference to some of the facts in so far as they are material at the present stage would be necessary.

3. In the present case, the State Government made a reference to adjudication on 25th September, 2001 of the following demand raised by the Respondent :

> "That for the year 1998-99 all the members of the association be paid bonus at the rate of 20% in accordance with the Payment of Bonus Act and as per the custom of Payment of bonus to all the employees including those drawing salary of more than Rs.3,500/- per month."

4. During the pendency of the proceedings in the reference, an application for amendment of the statement of claim was instituted on 19th June, 2006. The proposed amendment seeks to set up a plea that the Petitioner herein who is the employer is estopped by its past conduct from contending that certain members of the monthly rated staff are not workmen. The second plea that is sought to be advanced is that there is a community of interest

1 2004 I CLR 1062.

between the workmen at whose behest the reference has been made and the non-workmen from amongst the monthly rated staff. In sum and substance therefore, two pleas have been sought to be advanced viz. i) the plea of estoppel and (ii) the plea that there is community of interest between the workmen and the non-workmen on whose behalf the claim in the reference is also sought to be pursued.

5. The Industrial Tribunal allowed the application for amendment by the impugned order dated 19th August, 2006. Before the Industrial Tribunal it was sought to be urged on behalf of the employer that the plea to the effect that there was a community of interest between the workmen and the non-workmen as well as the plea of estoppel against the employer, based on past conduct was placed in issue inter partes in earlier proceedings which culminated in the judgment of the Supreme Court in **Mukand Limited** (supra). The judgment of the Supreme Court was rendered on 10th March, 2004 and it was submitted that the Supreme Court clearly concluded the question by holding that having regard to the provisions of the settlements that were entered into between the parties, no estoppel would operate against the employer.

Moreover, it was submitted that the Supreme Court had categorically held against the union on the question of the alleged existence of community of interest. The Tribunal by its impugned order came to the conclusion that in the earlier judgment of the Supreme Court, the contention of the union had been turned down only on the ground that there was an absence of pleadings. In that regard, the observations of the Tribunal in the impugned judgment and order are to the following effect :

> "The Hon'ble Apex Court, in the case before Their Lordships, turned down the findings of the Division Bench of the Hon'ble Bombay High Court on the point of community of interest only on the ground that this point had never been pleaded by the second party Association. In my humble view, in the absence of pleading, the Hon'ble Division Bench recorded the findings on the points of community of interest and estoppel and only for that reason the finding was set aside by the Apex Court and it is not that the points of community of interest or estoppel were held not open, to be pleaded, to the workmen to espouse the cause of non workmen. Thus, both paragraphs 27 and 46 of the Hon'ble Apex Court Judgment convey that there must be pleadings of community of interest and estoppel, else, the evidence in that regard cannot be read."

6. In the course of the proceedings before this Court, the aforesaid finding of the Tribunal is called into question on behalf of the Petitioner and it has been urged that it will be a manifestly

incorrect reading of the order of the Supreme Court to assert that it was only on account of a want of pleadings that the plea of estoppel and of community of interest were turned down. In the circumstances, both on behalf of the employer and the association, the attention of the Court has been drawn to the observations in the earlier decision to which it would now be necessary to turn.

7. There is no dispute between the contesting parties or for that matter between the learned counsel that the wage adjudication in respect of the charter of demands of the Association came up for consideration before the Supreme Court in **Mukand Limited** (Supra). The Supreme Court inter alia considered the question as to whether a Division Bench of this Court was justified in sustaining the award of the Tribunal to the extent to which that was affirmed. The question as regards a community of interest and of estoppel was specifically the subject matter of the decision of the Supreme Court. Undoubtedly in the initial part of the judgment and order dated 10th March, 2004, the Supreme Court in paragraph 27 of the judgment accepted the submission of the employer that in the absence of pleadings in regard to community of interest or

estoppel, the submission could not have been enquired into by the Industrial Tribunal at all. However, for the purposes of the present proceedings, it is necessary to emphasise that the judgment of the Supreme Court did not rest on the absence of pleadings in support of the plea of estoppel on the one hand and the community of interest on the other hand. In order to fully appreciate the position it would be convenient for the purposes of exposition to separately refer to the findings of the Supreme Court, both in regard to the question of estoppel and the issue of community of interest.

ESTOPPEL

In the present case, it is material to note that the plea of estoppel is that in the past the management had entered into various settlements under the provisions of the Industrial Disputes Act, 1947 and that by its conduct it had accepted all the employees under the reference as workmen. On this basis it was urged that the employer was estopped from asserting any position to the contrary. On the issue of estoppel the Supreme Court specifically rejected the plea raised on behalf of the union with the following observations :

"In the instant case, the employer and the employees by

> their conduct in concluding settlements in the past could not create or, confer upon, an adjudicating authority jurisdiction, where none existed, in respect of employees to whom the provisions of the Act are not applicable. This apart, the employer had not waived his right to raise the issue of the status of the employees under the Act in any of these settlements. The employer cannot (be) held to have waived his rights regarding the issue of the status of the employees under the Act in the absence of (waiver) in any of these settlements concluded by them with their employees."

Then again, in paragraph 59 of the judgment the Supreme Court held as follows :

> "We also hold that the employer and the employees by their conduct in concluding settlements in the past cannot create or confer upon an adjudicating authority jurisdiction where none existed in respect of employees to whom the provisions of the Act are not applicable. In the instant case, the employer had admittedly not waived their right (as) to (the) issue (of) the status of the employees under the Act in any of the said settlements."

Finally, on the issue of estoppel it would be material to advert to the findings in paragraph 62 which were to the following effect :

> "The Division Bench has further erred in relying on the various settlements concluded between the parties in the past regarding the service conditions of the employees including the settlement of 1974 relating to welfare scheme. Both the Division Bench and the learned single Judge failed to appreciate that none of the said settlements contained any provision, or even a whisper thereof, of any waiver by the appellant-Company of its

rights with regard to the status of the employees under the Act."

8. The question as to whether the employer was estopped by its conduct was thus squarely placed in issue in the earlier round of proceedings before the Supreme Court. A perusal of the proposed amendment which is allowed by the Industrial Tribunal in the present case and the grounds of estoppel that were urged in the earlier proceedings would demonstrate a substantial, if not complete identity between the two.

9. The Supreme Court while remanding the proceedings back to the Industrial Tribunal issued directions for a fresh adjudication in accordance with law. After the order of remand that was passed by the Supreme Court, an application for amendment was preferred in those proceedings to set up the plea of estoppel on the one hand and the community of interest on the other. That application was dismissed by the Industrial Tribunal on 20th January, 2005 and in a writ petition which was thereupon filed by the union a Learned Single Judge of this Court in his order dated 13th June, 2005 held thus :

> "By an order dated 10th May, 2004 the Hon'ble Supreme Court dismissed the appeals filed by the petitioner union and allowed the appeal filed by the respondent company inter alia holding that the issue regarding estoppel as well as the issue regarding community of interest was not pleaded by the petitioner and therefore could not be looked into by the tribunal. The Supreme Court further considered the evidence adduced and held that even on evidence the finding that there existed community of interest was erroneous."

10. The order of the Learned Single Judge was affirmed by a Division Bench of this Court consisting of Mr. Justice R.M. Lodha and Mr. Justice J.P. Devadhar, J. on 25th July, 2005.

COMMUNITY OF INTEREST

In so far as the question of community of interest between the workmen and the non-workmen is concerned, the finding of the Supreme Court in its judgment and order dated 10th March, 2004 was that the Industrial Tribunal had misconstrued both the evidence and had disregarded vital facts in holding that there existed such a community of interest. The Supreme Court held as follows :

> "The fact is that in each and every case above cited, the contention that workmen can raise a dispute in respect of the non-workmen was rejected by the Court. This issue, is therefore, answered in favour of the Company.
>
> The findings of the Court below that there is 'community

> of interest' between the workmen and the non-workmen is based on misconstruing of evidence and disregarding of vital facts."

The further observations of the Supreme Court were as follows :

> "Disputes can be raised only by the workmen with the employer. The workmen, however, can in appropriate cases espouse the cause of non-workmen if there is community of interest between the workmen and the non-workmen. In the instant case, it is an admitted fact that the community of interest or estoppel has never been pleaded and the findings rendered by the High Court on this issue is in the absence of pleadings. If the non-workmen are given the status and protection available to the workmen, it would mean that the entire machinery and procedure of the Act would apply to the non-workmen with regard to their employment/non-employment, the terms of employment, the conditions of labour etc. This would cast on the appellant – Company the onerous burden of compliance with the provisions of the Act in respect of the non-workmen. In our view, the situation is not envisaged by the Act which is solely designed to protect the interests of the workmen as defined in Section 2(s) of the Act."

The judgment of the Supreme Court adverts to the evidence which was produced before the Industrial Tribunal in support of the plea that the workmen were concerned in regard to the terms and conditions of service of the non-workmen and there was accordingly a community of interest. The discussion in the judgment of the Supreme Court between paragraphs 54 and 59

concludes with the specific finding that vital facts have been ignored and that evidence had been misconstrued. The issue as to whether there was a community of interest between the workmen and the non-workmen was specifically answered in favour of the management in paragraph 59 of the judgment. Finally, it would be material to refer to the conclusion of the Supreme Court in paragraphs 60 and 61 of the judgment :

> "The Industrial Tribunal did not have jurisdiction to adjudicate the present dispute inasmuch as it pertains to the conditions of service of non-workmen. The learned single Judge and the Division Bench of the High Court failed to appreciate that parties cannot by their conduct create or confer jurisdiction on an adjudicating authority when no such jurisdiction exists. We have already noticed that the Division Bench has erred in holding that there is community of interest between the workmen and the non-workmen and holding further that the workmen could raise a dispute regarding the service conditions of non-workmen.
>
> "The High Court further failed to appreciate that in order to secure revision of their own grades or other items of emoluments, it was not necessary for employees who are 'workmen' under the Act to agitate also for the revision of the emoluments of those who are not 'workmen', and that as such the 'workmen' in the present (case), have no direct or substantial interest in the revision of emoluments of employees who are not 'workmen', nor could be workmen be held to be vitally interested in the terms of employment of the non-workmen. The High Court also failed to appreciate that 'workmen' as well as non-workmen being in the same grade did not imply that the distinction between the two categories ceased to exist, or that belong to the same

class."

11. Ordinarily when an application for an amendment of pleadings comes up for consideration it is a settled principle of law that such applications have to be dealt with liberally. It has, however, become necessary to advert to the findings that have been rendered by the Supreme Court inter partes in which the pleas of estoppel and the existence of community of interest between the workmen and the non-workmen have been negatived. In this background there is merit in the submission which has been urged on behalf of the Petitioner that by allowing the amendment the Industrial Tribunal has permitted to reopen those very questions which stood concluded between the parties in the course of the adjudication in the previous proceedings. To allow the amendment therefore in the facts of this case would be to negate a conclusive finding that has been arrived at by the Supreme Court, something which by its very nature would not be permissible in law. The Industrial Tribunal seeks to proceed on the basis that the Supreme Court had negatived the plea of estoppel and of community of interest between the workmen and the non-workmen only on the basis of an absence of pleadings. The observations

and findings in the judgment of the Supreme Court will, however, clearly demonstrate that this assumption of the Tribunal is incorrect. The judgment of the Supreme Court does not rest on an absence of pleadings. The Supreme Court has considered the facts and the evidence on the record and it was on the basis thereof that the pleas came to be rejected. Those issues cannot be allowed to be reopened in a subsequent reference.

12. Before concluding it would be necessary to record that the learned senior counsel appearing on behalf of the Petitioner has not challenged the order of the Industrial Tribunal to the extent to which the amendment to plead the financial position of the company and the position of the steel industry (paragraphs 5.3.5 and 5.3.6 of the proposed amendment) was allowed. That part of the order of the Industrial Tribunal which is not challenged is therefore not disturbed.

13. In the circumstances, this Petition is allowed by quashing and setting aside the order of the Industrial Tribunal dated 19th August, 2006 in so far as it allowed the application for amendment so as to set up the plea of estoppel and of community of interest

between the workmen and the non-workmen. The order of the Tribunal in so far as it allowed the amendment to plead the financial position of the company and the position of the steel industry (paragraphs 5.3.5 and 5.3.6) which has not been assailed before this Court in the submissions is not disturbed.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.